

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL ARNOLD EVANS,

Defendant-Appellant.

UNPUBLISHED

October 14, 2003

No. 236877

Genesee Circuit Court

LC No. 00-007092-FC

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALFRED JACKSON, JR.,

Defendant-Appellant.

No. 236878

Genesee Circuit Court

LC No. 00-007094-FC

Before: Donofrio, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Defendants Evans and Jackson were tried jointly before a jury, and each was convicted of first-degree premeditated murder, MCL 750.316(1)(a), and accessory after the fact to murder, MCL 750.505. The trial court sentenced defendant Evans to concurrent terms of life imprisonment without parole for the first-degree murder conviction, and an enhanced term of fifty to eighty years' imprisonment for the accessory conviction as a fourth habitual offender. MCL 769.12. The court sentenced defendant Jackson to concurrent terms of life imprisonment without parole for the first-degree murder conviction and two to five years' imprisonment for the accessory conviction. Defendants filed separate appeals as of right, which we consolidated. We affirm in part and reverse in part.

I

Defendants first challenge the sufficiency of the evidence supporting their murder convictions. Defendant Evans argues that the trial court erred by denying his motion for a directed verdict regarding the first-degree murder charge, and defendant Jackson asserts that the

prosecutor introduced insufficient evidence that he committed first-degree murder. In reviewing a criminal defendant's challenge to the sufficiency of the evidence, or a court's denial of a criminal defendant's motion for a directed verdict, this Court considers the evidence in the light most favorable to the prosecution to determine whether a reasonable juror could find that the defendant's guilt was proven beyond a reasonable doubt. *People v Riley*, 468 Mich 135, 139; 659 NW2d 611 (2003); *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). This Court must draw all reasonable inferences and make credibility choices in support of the jury's verdict, and will not interfere with the factfinder's role in determining witness credibility or the weight of the evidence. *Nowack, supra* at 400; *People v Lundy*, 467 Mich 254, 258; 650 NW2d 332 (2002).

To convict a defendant of first-degree premeditated murder, the prosecution must prove that the defendant intentionally killed the victim, and that "the act of killing was premeditated and deliberate." *People v Ortiz*, 249 Mich App 297, 301; 642 NW2d 417 (2002). "Premeditation and deliberation require sufficient time to allow the defendant to take a second look." *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999). A prosecutor may sufficiently prove premeditation and deliberation through evidence of the homicide's particular circumstances and the defendant's conduct before, during, and after the homicide. *Id.* at 656; *People v Berry (On Remand)*, 198 Mich App 123, 128; 497 NW2d 202 (1993). Such particular circumstances include "the weapon used and the location of the wounds inflicted." *People v Coddington*, 188 Mich App 584, 600; 470 NW2d 478 (1991). A jury may reasonably infer premeditation and deliberation from circumstantial evidence, and "[m]inimal circumstantial evidence is sufficient to prove an actor's state of mind." *Ortiz, supra* at 301.

Although no eyewitness observed the crime, the record contains abundant circumstantial evidence to support beyond a reasonable doubt the jury's determination that defendants killed the victim. The medical examiner estimated that the victim died sometime during the late evening hours of September 26 or the early morning hours of September 27, 2000, from multiple stab wounds. From markings and other physiological phenomena, the examiner also opined that one person tightly held the victim by the neck from behind while another repeatedly stabbed him. Several witnesses testified that they saw defendants together during this time frame, and others testified that they saw defendants together in the same house with the victim. One of the witnesses testified that she heard an altercation inside the house around this time. The witness testified that she saw defendants walking away from the scene shortly after she heard the altercation.

An acquaintance of defendants, Elizabeth Parnell, testified she saw defendants around 1:00 or 1:30 a.m. on September 27, 2000. According to Parnell, Jackson had what appeared to be fresh blood on his white t-shirt and appeared more frightening than he did when she saw him earlier that evening. Testing later revealed the presence of the victim's blood on Jackson's shorts, sweat pants, and left shoe. Later that day, the victim's dead body was discovered in the attic with an electrical cord wrapped around his neck. The police detected abundant evidence that the victim's body had been dragged from the basement to the attic. Testimony suggested that defendants dragged the body to the attic after Jackson sent other members of the household to the store.

These facts, viewed in the prosecution's favor, lead directly to the conclusion that Jackson killed the victim. Although no physical evidence directly linked Evans to the victim's

murder, the jury rationally could infer beyond a reasonable doubt that Evans cooperated with Jackson in murdering the victim in light of the evidence that (1) Evans was present with Jackson and the victim when witnesses last saw the victim alive; (2) Evans entered the house with Jackson shortly before a witness heard an altercation; (3) within the next half hour, Evans left the house with Jackson and headed toward the house where Parnell saw them; (4) Evans accompanied Jackson, who looked frightening and wore a blood-stained t-shirt; and (5) the victim most likely suffered simultaneous strangling and stabbing that required two participants.

Ample evidence also existed to support the jury's determination beyond a reasonable doubt that Evans and Jackson premeditated and deliberated the victim's murder. The number and type of injuries that the victim suffered support a finding of premeditation where, in what one might reasonably infer constituted a planned attack of the tall, fit victim, one defendant manually strangled the victim with an electrical cord while his codefendant stabbed the victim eleven times, inflicting defensive wounds and a fatal blow directly through the victim's heart. *People v Gonzalez*, 468 Mich 636, 641; 664 NW2d 159 (2003); *People v Johnson*, 460 Mich 720, 733; 597 NW2d 73 (1999); *Berry, supra*. Also, the jury could glean premeditation and deliberation from the evidence that Evans and Jackson moved the victim's body and otherwise attempted to conceal the crime, though evidence remained that the house was the site of a struggle. *Johnson, supra*; *People v Haywood*, 209 Mich App 217, 229-230; 530 NW2d 497 (1995).

Although defendants correctly observe that the testimony of the many witnesses contained various inconsistencies, especially regarding the timing of events, this Court will not interfere with the jury's role in determining witness credibility. *Lundy, supra*.

II

Defendants next argue that they were improperly convicted of first-degree murder and as accessories after the fact to the same murder. Whether a defendant convicted of murder may also face conviction for being an accessory after the fact to the same murder constitutes a question of law that this Court reviews de novo. *People v Watkins*, 468 Mich 233, 238; 661 NW2d 553 (2003). Because defendants did not challenge the validity of their convictions before the trial court, this Court reviews these claims for plain error that affected defendants' substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

"The crime of accessory after the fact is a common-law felony punishable under the catch-all provision of MCL 750.505" *People v Cunningham*, 201 Mich App 720, 722; 506 NW2d 624 (1993). "An 'accessory after the fact,' at common law, according to Professor Perkins, is 'one who, with knowledge of the other's guilt, renders assistance to a felon in the effort to hinder his detection, arrest, trial or punishment.'" *People v Lucas*, 402 Mich 302, 304; 262 NW2d 662 (1978), quoting Perkins, *Criminal Law* (2d ed), p 667.

A defendant may not be convicted of the principal offense of murder and as an accessory after the fact to the same murder. *People v Hartford*, 159 Mich App 295, 299; 406 NW2d 276 (1987). "The definition of an accessory after the fact given by Perkins in his treatise on criminal law includes the requirement that the accessory not be guilty of the felony as a principal." *Id.* at 300, citing Perkins, p 667. "An accessory after the fact decides to help the principal only after the felony has been committed. It is impossible for one involved as a principal not to have

known of the crime until after he had completed it.” *Hartford, supra* at 301. “The appropriate way to view a defendant who has helped both before and after a crime is as a principal.” *Id.*

Because an accessory after the fact, by definition, cannot simultaneously be guilty of the same crime as a principal, we vacate defendants’ convictions of accessory after the fact to the victim’s murder.

III

Defendant Jackson further contends that the prosecutor repeatedly engaged in misconduct while cross-examining him at trial. We review the alleged instances of misconduct in context to determine whether the misconduct, if any, deprived the defendant of a fair and impartial trial. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

Of the several instances of alleged misconduct defendant cites, the only instance where defendant objected to actual misconduct was when the prosecutor improperly referred to some bond documentation before the jury. In light of the overwhelming evidence of Jackson’s guilt, the isolated nature of the prosecutor’s remark, and the trial court’s instruction that the attorneys’ “statements and arguments are not evidence,” this passing reference did not render Jackson’s trial unconstitutionally unfair.

Next defendant Jackson argues that trial counsel was ineffective for failing to demand a jury instruction and for failing to object to alleged prosecutorial misconduct. But the prosecutor’s comments were either permissible or minor, and the jury instruction was not supported by the evidence. Because Jackson cannot establish that a different outcome would likely have resulted from a superior performance by his trial counsel, we do not find error warranting reversal of his murder conviction. *People v Rodgers*, 248 Mich App 702, 718-719; 645 NW2d 294 (2001).

We affirm defendants’ convictions and sentences for first-degree murder, but reverse their accessory-after-the-fact convictions and vacate their sentences for this crime.

/s/ Pat M. Donofrio
/s/ David H. Sawyer
/s/ Peter D. O’Connell